

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

UNITED STATES OF AMERICA,

Respondent,

V.

CRIMINAL NO. 3:98-00047-01
(CIVIL ACTION NO. 3:05-0079)

KELVIN ANDRE SPOTTS,

Movant.

FINDINGS AND RECOMMENDATION

The defendant, Kelvin Andre Spotts, has filed a motion seeking to withdraw his §3582 motion. Based on his motion to withdraw, and for the reasons set forth in the Findings and Recommendation filed on August 3, 2005, in response to his §2255 motion, Civil Action No. 3:05-0124, it is **RESPECTFULLY RECOMMENDED** that Spotts' §3582 motion be dismissed, without prejudice.

Movant and respondent are hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 8(b), Rules Governing §2255 Cases, the parties may, within thirteen days of the date of filing these Findings and Recommendation, serve and file written objections with the Clerk of this Court, identifying the specific portions of the Findings and Recommendation to which objection is made and the basis for such objection. The judge will make a de novo determination of those portions of the Findings and Recommendation to which

objection is made in accordance with the provisions of 28 U.S.C. §636(b) and the parties are advised that failure to file timely objections will result in a waiver of their right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and to mail a copy of the same to movant and to the United States Attorney.

DATED: August 8, 2005



MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE